

October 7, 2022

File No. 450261

Public Order Emergency Commission
121 King Street West
Toronto, Ontario
M5H 3T9

Via email:

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ATTENTION:

J. Mather, A. Heine, J. Leon, Commission Counsel:

RE: The Freedom Convoy Group | Public Order Emergency Commission

I. Introduction

1. The Freedom Corp. seeks the following individuals be witnesses in the Inquiry:

- (1) Chris Barber (On POEC Witness List/subject to subpoena)
- (2) Tamara Lich (On POEC Witness List/subject to subpoena)
- (3) Tom Marazzo (On POEC Witness List/subject to subpoena)
- (4) Danny Bulford
- (5) Tom Quiggin
- (6) The Hon. Brian A. Peckford
- (7) Jacob Wells
- (8) Keith Wilson, K.C.
- (9) Dean French
- (10) Maggie Dingman
- (11) Dan Bostworth
- (12) Chris Deering
- (13) Jeff Evelyn
- (14) Rob Stocki
- (15) Jeremiah Jost,

- (16) Vincent Gircys,
- (17) Harold Ristau,
- (18) Edward Cornell
- (19) Palminder Singh
- (20) Noeline Villebrun
- (21) Sandra Mackenzie
- (22) Rupa Subramaya
- (23) JoAnne Cyr-Walsh
- (24) Shawn Folkes
- (25) Eva Chipiuk

2. On behalf of the Freedom Corp., it is submitted these witnesses should testify.

II. Proposed Witness: Relevant and Material to getting at the truth of past events effectively

3. A proposed witness to any proceeding, inquiry, or commission is a properly proposed witness if their evidence is both material and relevant. For a proposed witness's evidence to be material there must be a relationship between the proposed witness's evidence and the legal issues or matter to be determined. For a witness's evidence to be relevant, it typically must either prove or disprove a fact in issue. In the inquiry context however, it is not so much a matter to prove or disprove, but to "shed light on", clarify, discover, and make a complex situation clearer. Unlike traditional adversarial proceedings in the common law world, the very nature of this inquiry is to "*get at the truth of past events more effectively than an adversarial proceeding*".¹ It should also not be overly burdened with legalistic procedure carried out to protect its participants, otherwise it can alienate lay persons and general members of the public.²

III. Some protections for witnesses and Invocation

4. Some of the participants represented by this writer need protection, in the sense that they have outstanding criminal or other penal proceedings related to the facts and circumstances inquired into. Typically, where permitted, public inquiries delay or wait until parallel criminal, penal or other proceedings are complete, before the inquiry commences, to protect the accused etc. in those proceedings.³ This is unique in the sense that the law regarding parallel civil and administrative proceedings arising from the same facts and circumstances resulting in criminal charges, are not usually delayed as a result of the criminal proceedings. A stay, adjournment, or prohibition from proceedings with the civil or administrative proceeding due to criminal charges is rarely granted, as the law is such that only in exceptional and extraordinary circumstances should a court exercise its

¹ Hon. S. Gouge & H. MacIvor, *Commissions of Inquiry*, 2019, LexisNexis: Toronto, p. 7.

² Ibid, p. 10.

³ Ibid, p.185-187.

discretion to stay a civil action or administrative proceeding when there are parallel criminal proceedings.⁴

5. In this matter, due to the statutory deadlines that this inquiry has, there is no ability to wait. Like in the civil and administrative proceedings that go ahead, notwithstanding criminal proceedings are commenced, the participants get the usual protections under the *Charter*, the *Canada Evidence Act* as well as the provincial and territorial *Evidence Acts* across the country. As counsel however to a group composed of some participants who face or could face criminal or penal jeopardy, we've acted cautiously. This is due to the state of jurisprudence regarding parallel criminal proceedings. For example, in *R. v. Cameron*⁵, where this writer acted as appellate counsel, the Alberta Court of Appeal held that any unsworn statement in an administrative proceeding was not afforded the protection of s.13 of the *Charter* in a prosecution of the originator of that statement. This decision decided not to follow Superior Court decisions across the country that said otherwise.⁶ On top of that, only where witnesses are compelled under statute to answer questions in a proceeding, do the protections in s.5(2) the *Canada Evidence Act* apply. With respect to non-sworn statements, there is a protection under s.7 of the *Charter* that arises when the statements are compelled by statute, but it only applies where statutory provisions compel the statement.⁷
6. As such, Freedom Corp. cannot agree for any proposed witness to provide evidence to the Commission outside of the formal hearing under oath. Four of the witnesses above however, being (15) Jeremiah Jost, (16) Vincent Gircys, (17) Harold Ristau, and (18) Edward Cornell, have filed affidavits in the parallel judicial review proceedings, and have been cross-examined on those affidavits. Both the affidavits and the transcripts of cross-examination are provided along with this letter. Note, the objections I raised in the transcripts to questions put to these witnesses by the attorney general, were objections properly raised in those specific proceeds. Those objections have not been challenged by the attorney general and are not going to be. We rely upon the position set out by Lederman J., the co-author of *The Law of Evidence in Civil Cases*, in his decision in *Perera v. Pierre*⁸ regarding an adverse inference being drawn because of objections without an application to compel:

⁴ See *Gillis v. Eagleson*, [1995 CanLII 7190 \(ON SC\)](#), and *Schreiber v. Federal Republic of Germany*, [2001 CanLII 20859 \(ON CA\)](#)

⁵ *R v Cameron*, [2020 ABCA 276](#) leave to SCC denied [2021 CanLII 20320 \(SCC\)](#) and followed in *Quebec in Bruno c. R.*, [2021 QCCQ 57](#)

⁶ See *R v Carlson* (1984), 47 CR (3d) 46, [1984 CanLII 528 \(BCSC\)](#), *R v Tyhurst*, [1993 CanLII 814 \(BCSC\)](#), (*R v G(JJ)*, [2014 BCSC 2497](#)), *Ramon Fernandez v. Canada (Attorney General)* [2011 FC 275](#); and *R. v. Iyer* [2014 ABQB 356](#).

⁷ *R. v. White*, [\[1999\] 2 SCR 417](#)

⁸ *Perera v. Pierre* [2010 ONSC 1858](#).

It [is] an error of law to draw [an] adverse inference merely because objections are taken to questions on an examination on the grounds of relevance and no motion has been brought to determine that issue.⁹

7. This does not mean however that these objections will be raised again in this proceeding, or that the Commission is bound by those objections. It simply means that the Commission should not draw an adverse inference due to the objections made. If (15) Jeremiah Jost, (16) Vincent Gircys, (17) Harold Ristau, and (18) Edward Cornell testify before the Commission, any objection to questions would have to be dealt with at that time etc. if they are even made.
8. To be diligent on behalf of the proposed witnesses I make the following invocation on their behalf:

All proposed witnesses listed in this letter provide their testimony under compulsion as defined *R. v. Nedelcu*, 2012 SCC 59, and invoke their rights under s.7 and s.13 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“*Charter*”), to not have this testimony or documents compelled in this proceeding used in any penal proceeding against them: see *R. v. White* [1999] 2 S.C.R. 417, *R. v. Noël*, 2002 SCC 67, & *R. v. Nedelcu*, 2012.

Further, all proposed witnesses listed in this letter invoke the rights under s.5 the *Canada Evidence Act*, R.S.C. 1985, c C-5, for their testimony and any compelled documents not to be used or admissible in evidence against them in any criminal trial, other criminal proceeding, or any other form of proceedings against them personally.

Furthermore, all proposed witnesses listed in this letter invoke the rights and protections under:

s.6 of the *Alberta Evidence Act*, RSA 2000, c A-18;

s.4 of *Evidence Act*, RSBC 1996, c 124;

s. 9 of the *Evidence Act*, SS 2006, c E-11.2;

s.6 of *The Manitoba Evidence Act*, CCSM c E150;

s.9 of the *Evidence Act*, RSO 1990, c E.23;

s.7 of the *Evidence Act*, RSNB 1973, c E-11;

⁹ Ibid, para. 39.

s.59 of the *Evidence Act*, RSNS 1989, c 154;

s.6 of the *Evidence Act*, RSPEI 1988, c E-11;

s.5 of the *Evidence Act*, RSNL 1990, c E-16;

s.7 of the *Evidence Act*, RSY 2002, c 78;

s.7 of the *Evidence Act*, RSNWT 1988, c E-8;

s.7 of the *Evidence Act*, RSNWT (Nu) 1988, c E-8; and

s.285 of the *Code of Civil Procedure*, CQLR c C-25.0.

Lastly, all proposed witnesses listed in this letter take the position that the herein proceedings, its testimony and compelled documents are subject to the Rubicon principle outlined in *R. v. Jarvis* 2002 SCC 73 and may only be used or shared within the herein proceeding, and not used in any criminal or penal proceeding.

9. Though the practice of commissions of inquiry is not to issue subpoenas where they can get cooperation and only issue the same as a last resort,¹⁰ we request that all proposed witnesses listed herein be issued subpoenas to ensure them the ultimate protections under the *Canada Evidence Act*, as well as all the provincial and territorial statutes cited in the above invocation.

IV. Relevance and Materiality of each witness in getting at the truth of past events effectively that lead to the invocation of the Emergencies Act

(1) Chris Barber

10. Barber is a trucker, owner and driver of Big Red along with famous dog Zippy -- intent of convoy and protest, early membership and organization of convoy, interactions with police during travel to Ottawa, police interactions in Ottawa, coordination and communication with trucks in Ottawa. Personally experienced bank account freezes and arrested for peacefully protesting.

(2) Tamara Lich

11. Tamara Lich – volunteer who meet Chris Barber and helped with the convoy and fundraising -- intent of convoy and protest, her role with convoy - default spokesperson/mother hen for various groups and protestors, intent and goal of fundraising. Instrumental in agreement with Mayor for trucks to leave downtown. Personally experienced bank account freezes and arrested for peacefully protesting.

¹⁰ Hon. S. Gouge & H. MacIvor, above, p.204

(3) Tom Marazzo

12. Captain (Retired) Tom Marazzo – former army captain and then later a college instructor went to Ottawa to help with the convoy – took on the role for focussing on the safety lanes and police liaison and did four press conferences – roles included coordinating logistics of trucks and key liaison with police to ensure emergency and safety lanes always available, role in opening lines of communication with City of Ottawa, attendance at negotiation meetings with City of Ottawa to reduce impact on Ottawa residents, identified need for negotiator/mediator to speak to protestors re why they were there—experienced bank account freezes and inability to carry on normal living activities and purchase medications for child.

(4) Danny Bulford

13. Danny Bulford – former RCMP officer including major crimes investigator in White Horse and then with the Ottawa Parliamentary RCMP SWAT team/sniper – volunteered in Ottawa with the role of ensuring safety and security of protestors and Ottawa residents, coordinating with police to ensure bad actors and actions were identified and reported to the police, assess threats and activities of bad elements seeking to attend and participate in Ottawa protest -- can speak to barricades and blockades set up by the Police and to Ottawa impacts on businesses.

(5) Tom Quiggin

14. Tom Quiggin – recognized expert on security, intelligence and terrorism including work for the RCMP, Department of National Defence, and the Privy Council Office (**CV attached**) – volunteered with the convoy – prepared daily situation reports -- focussed on security threats at national level, applied his expertise in assessment of extremist groups, assessed residential street impacts vs business street impacts.

(6) Hon. Brian A. Peckford

15. The Hon. Brian A. Peckford – former Premier of Newfoundland and last living signatory to the Charter of Rights and Freedoms – provided advice and attended and witnessed protest, purpose of the protest—gave key note speech on the last Saturday on the main stage before the raids - peaceful civil disobedience, reaction to invocation of Emergencies Act and reason for holding press conference with Tamara Lich in support of protestors.

(7) Jacob Wells

16. Jacob Wells is the founder and co-owner of GiveSendGo -- insight and knowledge re GiveSendGo and crowdfunding, details re donors to the protests, where the money went, the ON AG seizure order, and Mareva Injunction.

(8) Keith Wilson, K.C.

17. Keith Wilson - legal counsel to freedom convoy, communication with GoFundMe/GiveSendGo, advising freedom convoy on right to peacefully protest and right to freedom of assembly and speech, defended litigation and injunction applications, served with the AG orders, interacted with banks re donations, oversaw the legal team which set up the not for profit corporation, daily coordination and negotiations with police, key negotiations with Mayor of Ottawa on agreement to winddown the protests and coordinated its implementation with government officials and police.

(9) Dean French

18. Dean French – former chief of staff to Premier Doug Ford -- volunteer intermediary/mediator between city of Ottawa and Freedom Convoy and its implementation.

(10) Maggie Dingman

19. Maggie Dingman is a 37 years old, Peterborough home-maker, mother of 2 children, twelve and nine. She was protesting in Ottawa on February 19th, where she was grabbed by police and stomped on. A rifle was pointed at her head. She was handcuffed and driven 30 minutes away to the outskirts of Ottawa, a remote location with no available transport or ability to use a phone in minus 25 winter conditions. Freedom Corp. has received first-hand reports of at least one hundred other protesters similarly being driven out of town and abandoned to fend for themselves in dangerous weather conditions.

20. Maggie now suffers from PTSD, and flashbacks of the police rifle being pointed at her head and has required medical treatments.

(11) Dan Bostworth

21. Ottawa resident/business owner - that lived and observed no foul play and positive efforts made by freedom convoy protestors to keep things peaceful. A business that can speak to how freedom convoy helped their business thrive in 3 weeks offsetting the harms of 2 years of government closures. I think the application was made in Dan Bostworth name and was denied standing.

(12) Chris Deering and (13) Jeff Evelyn

22. Both Chris Deering and Jeff Evelyn are retired military veterans and were present in Ottawa for the events in issue and they can give evidence regarding the police actions, violence, arrests and rendition of protestors to remote areas.

(14) Rob Stocki

23. Rod Stocki is a former police officer who was subject to a wiretap because he donated money to the convoy.

(15) Jeremiah Jost, (16) Vincent Gircys, (17) Harold Ristau, and (18) Edward Cornell

24. These four witnesses have clear relevant and material evidence in their affidavits and transcripts of questioning provided with the herein letter brief. Two of them had their bank accounts frozen, and subject to production of same to the Government of Canada without warrant or judicial authorization.

(19) Palminder Singh

25. Palminder Singh is a Sikh leader who attended the protests in Ottawa throughout their entire duration. He witnessed events and diversity.

(20) Noeline Villebrun and (21) Sandra Mackenzie

26. Noeline Villebrun and Sandra Mackenzie Indigenous Canadians and recognized Clan Mothers. Both were in attendance and observers of the events in Ottawa. They worked with Ottawa Police Services to help to de-escalate tensions with various indigenous groups and provocateur agents that escalated at Confederation Park and other locations in Ottawa.

27. It's submitted that Noeline Villebrun and Sandra Mackenzie **must** be called for an indigenous perspective of the events to be given. Though it is important for the Commission and lawyers "*to recognize that there is no single "Indigenous culture" or "Indigenous perspective"*"¹¹ these two witnesses have a perspective and story that they want to share. It is both relevant and material and should be heard.

(22) Rupa Subramaya

28. Rupa Subramaya is an Ottawa resident and reporter. Witnessed events firsthand. Wrote articles in National Post such as "*Freedom Convoy Dismantles stereotypes about who is opposed to vaccine mandates*" and "*Trucker convoy exposed hypocrisy of Canada's left-wing elite*".

¹¹ At 2.2.2.1, Guide for Lawyers Working with Indigenous Peoples, 38 Annual Civil Litigation Conference Friday, November 16 – Saturday, November 17, 2018, County of Carleton Law Association.
[2018 CanLIIDocs 10788](#)

(23) JoAnne Cyr-Walsh

29. JoAnne Cyr-Walsh is a 71-year-old grandmother. She was born in Ottawa and raised in Hull, Gatineau, Quebec. Lived in area 33 years and attended signing of *Charter* in 1982. On February 19, 2022, on Bank Street worked a couple blocks away for many years. She was taken to get fingerprinted at a makeshift station and charged with 4 counts of mischief and 1 count of obstruction.

(24) Shawn Folkes

30. Shawn Folkes participated in the protests and has family in Ottawa. He personally witnessed and spoke to the person who was displaying the the "Nazi Flag" which was widely characterized by the media as evidence of the protestors being extremists. He is a member of the black community and is African-Canadian.

(25) Eva Chipiuk

31. Eva Chipiuk - legal counsel to freedom convoy, advising clients on right to peacefully protest and right to freedom of assembly and speech, daily coordination and negotiations with Ottawa police and City of Ottawa, involved in communication with GoFundMe/GiveSendGo.

V. Conclusion

We thank you in advance for consideration of the herein submissions and look forward to hearing from you regarding next steps in relation to these witnesses.

Yours very truly,

FOSTER LLP



BRENDAN MILLER

cc:

Keith Wilson, KC

Eva Chipiuk

Bath-Sheba van den Berg